No. 14-6166

In the Supreme Court of the United States

DAVID ANTHONY TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the evidence that petitioner robbed, or attempted to rob, marijuana dealers was sufficient, as a matter of law, to satisfy the Hobbs Act's jurisdictional element that the prohibited conduct "in any way or degree" "affect[ed]" "commerce," 18 U.S.C. 1951(a), as defined by the Act to include "all * * * commerce over which the United States has jurisdiction." 18 U.S.C. 1951(b)(3).

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OPINION BELOW

The opinion of the court of appeals (J.A. 71a-86a) is reported at 754 F.3d 217.

JURISDICTION

The judgment of the court of appeals was entered on June 6, 2014. The petition for a writ of certiorari was filed on September 4, 2014, and granted on October 1, 2015. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

The Hobbs Act, 18 U.S.C. 1951, is reprinted in an appendix to this brief. App., *infra*, 1a-2a.

STATEMENT

Following a jury trial in the United States District Court for the Western District of Virginia, petitioner was convicted on two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; and one count of

possessing or brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c). The district court sentenced petitioner to 336 months of imprisonment, to be followed by three years of supervised release. J.A. 3a-4a. The court of appeals affirmed. J.A. 71a-86a.

A. Statutory Background

The Hobbs Act, 18 U.S.C. 1951, makes it an offense for any person to "in any way or degree obstruct[], delay[], or affect[] commerce"—including any "commerce over which the United States has jurisdiction"—by robbery or extortion, or to "attempt[] or conspire[] so to do." 18 U.S.C. 1951(a) and (b)(3). That prohibition is defined through several provisions of the Act. First, Section 1951(a) defines a Hobbs Act offense by making it unlawful, *inter alia*, to "in any way or degree obstruct[], delay[], or affect[] commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempt[] or conspire[] so to do." 18 U.S.C. 1951(a). Second, Section 1951(b)(1) and (2) define the terms "robbery" and "extortion." Third, Section 1951(b)(3) defines "commerce" to mean "commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction." 18 U.S.C. 1951(b)(3).

This case concerns the Hobbs Act's application to petitioner's robberies, or attempted robberies, of persons engaged in, or believed to be engaged in, the

marijuana trade. See J.A. 11a-12a (indictment charging petitioner with robbery or attempted robbery of "marijuana and drug proceeds"); J.A. 67a-68a (petitioner was convicted of "taking and obtaining, or attempting to take or obtain, by robbery, items having an effect on interstate commerce"). Congress has long exercised comprehensive jurisdiction over the market for marijuana. In 1946, when Congress enacted the Hobbs Act, see Act of July 3, 1946, ch. 537, 60 Stat. 420, Congress regulated the marijuana trade by imposing "registration and reporting requirements for all individuals importing, producing, selling, or dealing in marijuana" and, in addition, collected "transfer taxes whenever the drug changed hands." *Gonzales* v. *Raich*, 545 U.S. 1, 11 (2005). The United States now exercises its jurisdiction to regulate the marijuana trade under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.*, which makes it an offense, *inter alia*, to manufacture, distribute, dispense, or possess the drug. 21 U.S.C. 841(a), 844(a); see 21 U.S.C. 812(c), Sch. I(c)(10) (listing marijuana in Schedule I); *Raich*, 545 U.S. at 13.

The CSA contains no jurisdictional element, reflecting Congress's finding that "[f]ederal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic." 21 U.S.C. 801(6); see 21 U.S.C. 801(3)-(5) (explaining the basis for that finding). Consistent with that finding, this Court has confirmed that "Congress' regulatory jurisdiction" over the marijuana trade validly extends to "the intrastate manufacture and possession of marijuana." 545 U.S. at 7, 15, 19, 27 n.37.

B. The Current Controversy

1. In 2009, cocaine and marijuana were the most common drugs sold by Roanoke drug dealers. 1/2013 Trial Tr. (Tr.) 63-64. Dealers could typically purchase a kilogram of cocaine wholesale for about $22,000 to $30,000; break the kilogram down into smaller quantities for resale; and sell retail quantities of the drug for about $100 per gram, producing a significant profit. Tr. 64-67. The marijuana trade worked similarly, and dealers could make substantial profits breaking down bulk amounts of marijuana for resale. Tr. 68-69. Such drug dealers required cash to purchase drug supplies and pay upstream debts, normally would not use banks, and stored cash in their homes. Tr. 68, 72. Roanoke drug dealers thus typically would have large amounts of cash on hand. Tr. 67-68.

The lucrative drug business spawned a separate "cottage industry" of home-invasion robberies targeting Roanoke drug dealers, which in 2009 were occurring "all over" the city. Tr. 414, 424; see Tr. 73. The "large number" of home invasions prompted the Roanoke police to seek assistance from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Tr. 124, 413-414. Their investigation into the series of Roanoke home invasions was later "absorbed in the overall federal investigation." Tr. 416.

During this period, the Southwest Goonz—a home-invasion gang led by George Fitzgerald—flourished. Tr. 79-81, 416. The gang targeted drug dealers because of the significant quantities of cash, drugs, and high-end consumer goods dealers typically possessed, Tr. 67-68, 72, 81, 108-109, and because dealers often would not report such thefts to law enforcement. Tr. 70-71, 80-81, 265, 414. The ATF ultimately attributed

more than 30 home invasions to the gang, many of which had not been reported to the police. Tr. 415, 417. Petitioner persuaded Fitzgerald to let petitioner join in several of the home-invasion robberies, J.A. 72a, two of which are relevant here.

a. On the evening of August 27, 2009, Fitzgerald, petitioner, and two other members of the gang targeted the home of Joshua Whorley. J.A. 73a. Fitzgerald had learned from a source that Whorley was a drug dealer who sold "exotic," "high grade" marijuana, and he conveyed this information to petitioner and the rest of the crew. *Ibid.*; see Tr. 89-90, 112-113, 266, 364. The men headed to Whorley's home in an attempt to steal "[m]arijuana and money." Tr. 102; see J.A. 73a; Tr. 286, 299, 396.

Armed with Fitzgerald's gun, petitioner kicked in the door. Tr. 90-93, 296. As the men ransacked Whorley's home, petitioner and Fitzgerald demanded, "Where is your money and where is your weed at?" Tr. 93, 212-213; see J.A. 73a; Tr. 178, 223. The gang was unable to locate substantial amounts of marijuana or cash, however, and ultimately stole Whorley's cell phone and $40, jewelry, and a cell phone belonging to Whorley's girlfriend. J.A. 73a; Tr. 181-182, 213, 218-219, 303. In addition, the gang stole a single marijuana cigarette. J.A. 73a; see Tr. 194, 213.

The August 27 robbery was the third time that the residence had been targeted and the second time within a year. J.A. 73a; Tr. 170-172, 187, 202-204. Whorley admitted that he had sold marijuana in the past and, although he denied dealing drugs at the time of the August 27 home invasion, Tr. 173, a Roanoke detective suspected that Whorley was a dealer be-

cause such dealers were repeatedly targeted for robbery. Tr. 472-473; see Tr. 72.

b. On the evening of October 21, 2009, Fitzgerald, petitioner, and another member of the gang targeted the home of William "W.T." Lynch. J.A. 73a-74a. Fitzgerald had obtained information from a reliable source that Lynch was a marijuana dealer and that the source had previously robbed Lynch of 20 pounds of marijuana in front of Lynch's home. *Ibid.*; Tr. 353-355, 364, 370. Fitzgerald conveyed this information to petitioner and Dejuan Lemons and told them that "there was supposed to be marijuana" at the house. Tr. 367-368, 420-421. Petitioner later admitted to a federal agent that he expected to obtain "pounds of weed" from the robbery. Tr. 420; see Tr. 354. The victim, Lynch, also later admitted to the police that he was a marijuana dealer but asked that police not tell his wife about his "drug-dealing activities." Tr. 443; see Tr. 436.

When the three-man crew entered the Lynch home, they found Lynch, his wife, and two children in the living room. Tr. 357-358, 365, 369. Lynch's wife ran out of the room, Lemons laid chase, and petitioner held Lynch and the children at gunpoint. Tr. 357-358, 365-366, 369. When Fitzgerald demanded that Lynch tell him "where the weed at," Lynch told him that a "guy named Mark ha[d] the weed" and that Lynch did not. Tr. 359. Petitioner and Lemons ransacked the house but failed to find drugs or money. Tr. 361, 366, 368. The crew left with only Lynch's cell phone. J.A. 74a; Tr. 361, 377.

2. In 2012, a federal grand jury returned a superseding indictment (J.A. 11a-14a) charging petitioner, as relevant here, with two counts of robbery and at-

tempted robbery "affect[ing] commerce, and the movement of articles and commodities in such commerce," by attempting to take or obtain "marijuana and drug proceeds" from his victims, in violation of the Hobbs Act, 18 U.S.C. 1951(a) and 2. J.A. 12a-13a. In late October 2012, petitioner's first trial resulted in a mistrial after the jury was unable to reach a unanimous verdict. J.A. 74a; D. Ct. Doc. 54 (Oct. 24, 2012). Petitioner's retrial was scheduled for January 2013. D. Ct. Doc. 56 (Oct. 30, 2012); see J.A. 75a.

One of the government's pretrial motions sought to prohibit petitioner from presenting evidence supporting the argument that "robbery of a drug dealer selling * * * 'in-state' marijuana would not be a violation of the Hobbs Act." J.A. 15a. The government argued that even if a drug dealer victimized by such a robbery trades "in marijuana grown in Virginia," the robbery will, "as a matter of law, affect[] interstate commerce" because drug dealing in marijuana "'is an inherently economic enterprise that affects interstate commerce.'" J.A. 15a-17a (quoting *United States* v. *Williams*, 342 F.3d 350, 355 (4th Cir. 2003), cert. denied, 540 U.S. 1169 (2004)). The district court granted the motion. J.A. 60a; see J.A. 44a-46a.

At trial, petitioner moved for a judgment of acquittal at the conclusion of the government's case-in-chief, and renewed that motion at the close of evidence, based on his contention that "no evidence" had been admitted to support the affect-on-commerce element of a Hobbs Act offense. Tr. 445-447, 532-533; cf. Fed. R. Crim. P. 29(a). The district court denied the motions, explaining that precedential decisions established "the legal proposition" that such "drug dealing impacts interstate commerce" and that the court "in-

tend[ed] to give that instruction to the jury as a matter of law." Tr. 446. Proof of a "theft of drugs" or "an attempt to steal [such] drugs," the court explained, is "sufficient to satisfy the [Hobbs Act's] interstate commerce requirement." Tr. 532-533.

The district court subsequently instructed the jury on the elements of a Hobbs Act offense. J.A. 61a-66a (written instructions provided to the jury); see Tr. 602-608 (oral instructions). As relevant here, the court instructed that the government must not only establish the robbery element of the offense but must also establish beyond a reasonable doubt that, "as a result of [petitioner's] actions, interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in any way or degree." J.A. 63a. "The term 'commerce,'" the court continued, "means any commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction." J.A. 65a.

The district court further instructed that the government could satisfy its burden of proving "an obstruction, delay, or effect on interstate commerce" by proving that petitioner "reduced the movement of articles and commodities in interstate commerce, in this case, illegal drugs and drug proceeds, or attempted to do so, by the robberies charged." J.A. 63a. That element, the court explained, "may be proven by evidence that [petitioner's] actions were likely to affect

interstate commerce, even though the actual impact on commerce is small." J.A. 63a-64a.

The jury found petitioner guilty on both Hobbs Act charges and on one firearms count. J.A. 67a-69a.

3. The court of appeals affirmed. J.A. 71a-86a. After noting that petitioner's appeal "rest[ed] solely on the sufficiency of the evidence" and not on the district court's jury instructions, J.A. 82a, the court held that the evidence was sufficient to establish the jurisdictional element of the Hobbs Act. J.A. 76a-86a.

The court of appeals explained that the Hobbs Act utilizes "'all the constitutional power Congress has to punish interference with interstate commerce'" and that the Act's jurisdictional element is satisfied by a *de minimis* effect on commerce. J.A. 76a-77a (quoting *Stirone* v. *United States*, 361 U.S. 212, 215 (1960)). Moreover, the court continued, such an effect can be established by showing that "the 'relevant class of acts'" in the "aggregate" has "a measureable impact on interstate commerce." J.A. 77a-78a (citation omitted).

This Court's decision in *Raich*, the court of appeals recognized, established that Congress has authority under the Commerce Clause to regulate the entire "national market for marijuana," including the "intrastate marijuana market because of its aggregate impact on interstate commerce." J.A. 77a, 80a. Thus, the court observed, because Congress has jurisdiction over "marijuana that is grown, processed, and sold entirely within a single state" and because the Hobbs Act's definition of "commerce" in 18 U.S.C. 1951(b)(3), encompasses such "commerce over which the United States has jurisdiction," the Act logically applies to "robberies of drug dealers" with no "marijuana excep-

tion." J.A. 79a-80a (citation omitted). The court determined that robberies of drug dealers fall within the Hobbs Act's prohibition because "[d]rug dealing is a commercial enterprise" and robberies that "threaten that enterprise" affect "a trade that plainly is both economic and interstate in character." J.A. 80a (citation omitted).

The court of appeals added that, "[b]ecause drug dealing in the aggregate necessarily affects interstate commerce, the government was simply required to prove that [petitioner] depleted or attempted to deplete the assets of [a drug-dealer's] operation." J.A. 82a. The government satisfied that burden, the court explained, because the evidence was sufficient to show that "Whorley was a drug dealer" and that petitioner "depleted or attempted to deplete his assets" and "attempted to steal drugs and drug proceeds" during the robbery. J.A. 82a-83a (emphasis omitted). The court similarly concluded that the evidence was sufficient for the jury to find that "Lynch was a drug dealer" and that petitioner "attempted to deprive Lynch's operation of both drugs and drug proceeds" by robbery. J.A. 83a-84a. The evidence was also sufficient to show that "[petitioner] intentionally targeted a business engaged in interstate commerce" and "rob[bed] [each] victim in the belief that he [would] recover the proceeds of [the] enterprise." J.A. 84a. Given petitioner's intentional targeting, the court concluded, petitioner could "not fortuitously escape prosecution under the Hobbs Act" simply "because his target did not possess" at the time of the robbery the property that petitioner attempted to steal. J.A. 84a-85a.

SUMMARY OF ARGUMENT

The evidence of petitioner's "robbery or attempted robbery of a [marijuana] dealer" of his supply of marijuana was sufficient to "prov[e] beyond a reasonable doubt the interstate commerce element" of the Hobbs Act counts on which petitioner was convicted. See Pet. i. This is so for two independent reasons.

First, as the court of appeals concluded, evidence that petitioner robbed or attempted to rob marijuana dealers of marijuana is, standing alone, sufficient evidence from which a rational jury could find the jurisdictional element satisfied. The Hobbs Act covers all robberies that affect, "in any way or degree," any commerce over which the United States has jurisdiction. 18 U.S.C. 1951(a) and (b)(3). That expansive language exercises the full extent of Congress's Commerce Clause authority. In establishing the jurisdictional element, the government can rely on case-specific proof of an effect on interstate commerce. But it can also rely on proof that the robbery affects a class of activities that bears the requisite relation to interstate commerce, even if the activity in question is by itself entirely local. See *Russell* v. *United States*, 471 U.S. 858, 859 n.4 (1985).

Here, the class of activities involving marijuana distribution, even involving intrastate production, possession, and sale, is "commerce over which the United States has jurisdiction." 18 U.S.C. 1951(b)(3). Congress exerted such authority over all marijuana distribution in the Controlled Substances Act, and this Court confirmed that Congress's regulatory power over interstate commerce extends to the regulation of local, intrastate production and distribution of marijuana. *Gonzales* v. *Raich*, 545 U.S. 1 (2005). According-

ly, all domestic trade in marijuana, even trade occurring wholly within a single State, constitutes, as a matter of law, "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(b)(3). In light of that principle, the court of appeals correctly held that the evidence of petitioner's attempts to rob marijuana dealers of marijuana is thus sufficient to show that the attempted robberies would "in any way or degree" affect "commerce over which the United States has jurisdiction" (the marijuana trade) or the "movement of any article or commodity" (marijuana) in "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(a) and (b)(3).

Second, even without regard to that theory, the trial evidence showed that petitioner specifically targeted marijuana dealers who traded in "exotic" marijuana and wholesale quantities of the drug. Based on the evidence as a whole, a reasonable jury could infer that the attempted robberies (if successful) would have affected "the movement of [marijuana] in commerce" across State lines or the interstate "commerce" conducted by the targeted dealers, 18 U.S.C. 1951(a).

ARGUMENT

THE TRIAL EVIDENCE IS SUFFICIENT TO SHOW THAT PETITIONER'S ROBBERIES OF MARIJUANA DEALERS AFFECTED COMMERCE OVER WHICH THE UNITED STATES HAS JURISDICTION

The Hobbs Act provides that "[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do" is guilty of an offense. 18 U.S.C. 1951(a). That text identifies the "two essential elements" of a Hobbs Act violation: a jurisdictional

"commerce" element and a non-jurisdictional element based on an act of robbery or extortion. See *Stirone* v. *United States*, 361 U.S. 212, 218 (1960). The statutory text, in turn, shows that the Act's jurisdictional element embodies the full scope of Congress's constitutional authority over commerce. That power extends to even purely intrastate activity when that activity is a commercial one that falls within a class of activities that, in the aggregate, can reasonably be expected to have a substantial effect on interstate commerce.

Here, the evidence that petitioner robbed or attempted to rob persons engaged in, or believed to be engaged in, marijuana dealing satisfied that jurisdictional element. Alternatively, the jury could have rationally concluded that the marijuana dealers targeted for robbery were, or were believed to be, engaged in trade involving out-of-state marijuana. On either theory, the evidence was sufficient to satisfy the Hobbs Act's jurisdictional element.

A. The Hobbs Act's Jurisdictional Element Employs The Full Scope of Congress's Authority Over Commerce

This Court has long recognized that the "broad" language of the Hobbs Act "use[s] all the constitutional power Congress has to punish interference with interstate commerce by * * * robbery." *Stirone*, 361 U.S. at 215.

1. The statutory text reflects Congress's intent to exercise all of its constitutional power under the Commerce Clause

Three features of the Hobbs Act's broad text demonstrate that the Act exercises the full scope of

Congress's Commerce Clause power to regulate robbery and extortion.

First, the Hobbs Act extends both to activities "affect[ing] commerce" as well as those affecting the movement of an article or commodity "in commerce." 18 U.S.C. 1951(a). The phrase "affecting commerce" is a "[term] of art that ordinarily signal[s] the broadest permissible exercise of Congress' Commerce Clause power." *Citizens Bank* v. *Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (per curiam); see *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 273 (1995). The phrase "in commerce" is also a "[term] of art," which describes more narrowly items actually in "the flow of interstate commerce." *Allied-Bruce Terminix Cos.*, 513 U.S. at 273 (emphasis and citation omitted); see *Gulf Oil Corp.* v. *Copp Paving Co.*, 419 U.S. 186, 194-195 (1974). "Congress is aware of the 'distinction between legislation limited to activities 'in commerce' and an assertion of its full Commerce Clause power so as to cover all activity substantially affecting interstate commerce." *Russell* v. *United States*, 471 U.S. 858, 859 n.4 (1985) (citation omitted). By employing both formulations, Congress expressed its intent to allow the Hobbs Act's jurisdictional inquiry to be satisfied under either theory. Cf. *McLain* v. *Real Estate Bd. of New Orleans, Inc.*, 444 U.S. 232, 242 (1980) (explaining that "the jurisdictional requirement of the Sherman Act may be satisfied under either the 'in commerce' or the 'effect on commerce' theory").

Second, Congress emphasized that the jurisdictional inquiry is satisfied by activity that "in *any* way or degree" affects commerce or the movement of items in commerce. 18 U.S.C. 1951(a) (emphasis added). "These words do not lend themselves to restric-

tive interpretation." *United States* v. *Culbert*, 435 U.S. 371, 373 (1978) (interpreting Section 1951(a)). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Webster's Third New International Dictionary* 97 (1976)). Section 1951(a) accordingly confirms that any type of effect on commerce, regardless of the "degree" or magnitude of that effect, satisfies the Act's jurisdictional element.

Finally, Congress defined the term "commerce" broadly. The Act's definition of the term employs a geographic understanding of "commerce" by encompassing "commerce within the District of Columbia, or any Territory or Possession of the United States"; "all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof"; and "all commerce between points within the same State through any place outside such State." 18 U.S.C. 1951(b)(3). In addition, the Act adopts an expansive legally focused understanding of "commerce" by including within the term's scope "all other commerce over which the United States has jurisdiction." *Ibid.* As a result, the Act's jurisdictional requirement can be satisfied by (1) an effect on "commerce" in either the geographic or the jurisdictional sense or (2) an effect on the movement of an item in "commerce" so defined.[1]

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[1] The Hobbs Act's jurisdictional element evolved from a materially similar jurisdictional provision in the Anti-Racketeering Act of 1934, ch. 569, 48 Stat. 979, to which Congress enacted the Hobbs Act as an amendment. See 60 Stat. 420 (amending 1934 Act by adopting text of the Hobbs Act); *Callanan* v. *United States*, 364 U.S. 587, 590-591 (1961). The 1934 Act applied to activity that "in

This Court has thus repeatedly concluded that the Hobbs Act announces Congress's "purpose to use all the constitutional power [it] has to punish interference with interstate commerce by extortion [or] robbery." *Culbert*, 435 U.S. at 373 (quoting *Stirone*, 361 U.S. at 215); see *Scheidler* v. *National Org. for Women, Inc.*, 537 U.S. 393, 408-409 (2003); *Evans* v. *United States*, 504 U.S. 255, 263 n.12 (1992). Unlike the substantive element of a Hobbs Act offense, for which the rule of lenity may be relevant when confronting grievous statutory ambiguity, see *Scheidler*, 537 U.S. at 408 (citing *United States* v. *Enmons*, 410 U.S. 396, 411 (1973)), the jurisdictional element of the Act is expressed in expansive statutory language that unambiguously applies the "full extent of [Congress's] commerce power" to prohibit extortion and robbery. *Ibid.*

2. The Commerce Clause power extends to intrastate activities that fall within a class of economic activities having, in the aggregate, a substantial effect on interstate commerce

The Commerce Clause authorizes Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S.

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any way or in any degree affect[ed] trade or commerce" or any article or commodity moving therein, and defined "trade or commerce" to include geographically defined commerce and "all other trade or commerce over which the United States has constitutional jurisdiction." §§ 1-2, 48 Stat. 979-980. Like their Hobbs Act counterparts, those provisions were specifically "designed * * * to extend Federal jurisdiction over all restraints of any commerce within the scope of the Federal Government's constitutional powers." S. Rep. No. 532, 73d Cong., 2d Sess. 1 (1934); see 78 Cong. Rec. 5734-5735 (1934); see also *Callanan*, 364 U.S. at 594 n.8.

Const. Art. I, § 8, Cl. 3. "[I]t is now well established that Congress has broad authority under th[at] Clause." *National Fed'n of Indep. Bus.* v. *Sebelius*, 132 S. Ct. 2566, 2585 (2012) (opinion of Roberts, C.J.) (*NFIB*). Among other things, "the Commerce Clause has * * * long been interpreted" to grant Congress authority "extend[ing] beyond activities actually *in* interstate commerce to reach other activities that, while wholly local in nature, nevertheless substantially *affect* interstate commerce." *McLain*, 444 U.S. at 241. This Court's precedents accordingly establish that, "under its commerce power," Congress may regulate the "channels of interstate commerce," "instrumentalities of interstate commerce" and "persons or things in interstate commerce," and "those activities that substantially affect interstate commerce." *United States* v. *Morrison*, 529 U.S. 598, 608-609 (2000) (quoting *United States* v. *Lopez*, 514 U.S. 549, 558-559 (1995)); see *United States* v. *Robertson*, 514 U.S. 669, 671 (1995) (per curiam) (explaining that "[t]he 'affecting commerce' test" recognizes "Congress' power over purely intrastate commercial activities that nonetheless have substantial interstate effects"); see also, *e.g.*, *Gonzales* v. *Raich*, 545 U.S. 1, 16-17 (2005); *Perez* v. *United States*, 402 U.S. 146, 150 (1971).

Congress's power to regulate local activity having a "substantial affect" on commerce, moreover, "is not limited to regulation of an activity that by itself substantially affects interstate commerce"; it "also extends to activities that do so only when aggregated with similar activities of others." *NFIB*, 132 S. Ct. at 2586 (opinion of Roberts, C.J.); see, *e.g.*, *Perez*, 402 U.S. at 152-155, 157 (holding that Congress's Commerce Clause authority extends to "purely intrastate"

loansharking because extortionate credit transactions are within a "class of activities" that substantially affects interstate commerce by "syphon[ing] funds from numerous localities") (emphasis omitted). As a result, "Congress' Commerce Clause power 'may be exercised in individual cases without showing any specific effect upon interstate commerce'" so long as "in the aggregate the economic activity in question would represent 'a general practice . . . subject to federal control.' Only that general practice need bear on interstate commerce in a substantial way," *Citizens Bank*, 539 U.S. at 56-57 (citations omitted), and, when the class of activity has such an effect, "courts have no power 'to excise, as trivial, individual instances' of the class," *Perez*, 402 U.S. at 154 (citation omitted). In other words, "the *de minimis* character of individual instances * * * is of no consequence" under this Court's precedents "firmly establish[ing] Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Raich*, 545 U.S. at 17 (citation omitted).

That aggregation principle applies in circumstances in which the regulated activity involves "some sort of economic endeavor." *Morrison*, 529 U.S. at 610-611. In *Raich*, for instance, the Court held that "Congress' power to regulate interstate markets * * * encompasses the portions of those markets that are supplied with drugs produced and consumed locally." 545 U.S. at 7-9. The Court explained that the activity "regulated by the CSA [is] quintessentially economic" because it concerns the "production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market." *Id.* at

25-26. Such regulation, the Court concluded, fell within "Congress' regulatory jurisdiction," *id.* at 27 n.37, because marijuana is "a fungible commodity for which there is an established, albeit illegal, interstate market," *id.* at 18, and because Congress could reasonably conclude that the "aggregate" effect of "leaving home-consumed marijuana outside federal control would * * * affect price and market conditions" and have "a substantial effect on supply and demand in the national market for that commodity," *id.* at 19. *Raich* explained that "[o]ne need not have a degree in economics" to recognize that exempting marijuana "locally cultivated for personal use" from regulation would have such aggregate effect because, "under any commonsense appraisal of the probable consequences," permitting such use would likely have a "substantial impact on the interstate market for this extraordinarily popular substance." *Id.* at 28-29. That conclusion, the Court noted, was not merely "rational, but 'visible to the naked eye.'" *Ibid.* (quoting *Lopez*, 514 U.S. at 563).[2]

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[2] This Court has declined to "adopt a categorical rule against aggregating the effects of any noneconomic activity," *Morrison*, 529 U.S. at 613, but has twice held, in examining particular statutes regulating conduct having no relation to economic activity and lacking a jurisdictional element requiring a connection to commerce, that the requisite effect on interstate commerce should be analyzed without such aggregation. See *id.* at 605-606, 617 (holding that Congress's provision of a civil remedy for certain victims of crimes of violence motivated by gender exceeded its commerce power; concluding that Congress could not in that context "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce"); *Lopez*, 514 U.S. at 561 (concluding that an effect on interstate commerce could not be shown by aggregating the effects of the activity of pos-

Raich's mode of analysis reflects this Court's use of practical economics based on common sense and logic to evaluate a regulated activity's likely effect on interstate commerce. See also, *e.g.*, *Citizens Bank*, 539 U.S. at 58 (concluding that "the broad impact of commercial lending on the national economy" is "evident" with "[n]o elaborate explanation" required); *Summit Health, Ltd.* v. *Pinhas*, 500 U.S. 322, 331 (1991) (concluding that "'as a matter of practical economics,'" "a reduction in the provision of opthalmological services in the Los Angeles market" would occur if an alleged antitrust conspiracy were successful) (quoting *McLain*, 444 U.S. at 246); *Russell*, 471 U.S. at 862 (upholding prosecution under federal arson statute for setting fire to a local rental property because "the local rental of an apartment unit is merely an element of a much broader commercial market in rental properties").

Hobbs Act decisions in the courts of appeals apply those principles. In addressing robberies targeting persons engaged in commercial activity, the courts of appeals have consistently concluded that it is appro-

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sessing a handgun within 1000 feet of a school, where that activity did not "arise out of" or have any "connection with a commercial transaction"). Those statutes are unlike the Hobbs Act, which contains an explicit jurisdictional element requiring an effect on commerce and addresses a form of criminal activity that is inherently economic. See, *e.g.*, *United States* v. *Walker*, 657 F.3d 160, 179 (3d Cir. 2011) (distinguishing *Lopez* and *Morrison* on those bases), cert. denied, 132 S. Ct. 1122 (2012), and 134 S. Ct. 120 (2013); *United States* v. *Malone*, 222 F.3d 1286, 1295 (10th Cir.) (concluding that the Hobbs Act is distinguishable from the statutes at issue in *Lopez* and *Morrison* because "the Hobbs Act regulates economic activity" and "contains an explicit and expansive jurisdictional element"), cert. denied, 531 U.S. 1028 (2000).

priate to consider the aggregate effect of such robberies as a class on interstate commerce because such a "[r]obbery, even though accompanied by actual or threatened physical harm, is undeniably an economic crime that involves the involuntary transfer of economically valuable assets." *United States* v. *Gray*, 260 F.3d 1267, 1274 (11th Cir. 2001) (emphasis omitted) (robbery of restaurant), cert. denied, 536 U.S. 963 (2002); see, *e.g.*, *United States* v. *Walker*, 657 F.3d 160, 179 (3d Cir. 2011) (robbery of drug dealers), cert. denied, 132 S. Ct. 1122 (2012), and 134 S. Ct. 120 (2013); *United States* v. *Morris*, 247 F.3d 1080, 1086-1087 (10th Cir. 2001) (robbery of grocery store). Likewise, no court of appeals requires the government to prove that the specific Hobbs Act offense at issue in a prosecution has "substantial" effect on interstate commerce. The courts instead uniformly hold that, in any "individual case, proof of a *de minimis* effect on interstate commerce is all that is required." *United States* v. *Clausen*, 328 F.3d 708, 711 (3d Cir.) (robberies of multiple businesses), cert. denied, 540 U.S. 900 (2003).[3]

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[3] Accord *United States* v. *Tillery*, 702 F.3d 170, 174 (4th Cir. 2012) (robbery of dry cleaner), cert. denied, 133 S. Ct. 2369 (2013); *United States* v. *Carr*, 652 F.3d 811, 813 (7th Cir.) (robbery of convenience store), cert. denied, 132 S. Ct. 827 (2011); *United States* v. *Baylor*, 517 F.3d 899, 901 (6th Cir.) (robbery of restaurant), cert. denied, 554 U.S. 920 (2008); *United States* v. *Lynch*, 437 F.3d 902, 908-909 (9th Cir.) (en banc) (per curiam) (robbery of non-drug assets of drug dealer), cert. denied, 549 U.S. 836 (2006); *United States* v. *Capozzi*, 347 F.3d 327, 335-337 (1st Cir. 2003) (extortion of auto dealer), cert. denied, 540 U.S. 1168 (2004); *United States* v. *Silverio*, 335 F.3d 183, 186-187 (2d Cir. 2003) (per curiam) (robbery of assets of medical practice); *United States* v. *Williams*, 308 F.3d 833, 838-839 (8th Cir. 2002) (robbery of cab

Petitioner himself "does not contest the long-established rule" that a Hobbs Act prosecution need only show that the charged conduct has a "*de minimis*" "connection to interstate commerce." Br. 27. Nor does he challenge the use of aggregation analysis under the Hobbs Act. Accordingly, he concedes that "the nexus between the challenged conduct—in this case, the robberies—and interstate commerce 'may be *de minimis.*'" Br. 21-22 (citation omitted).

B. Proof Of Petitioner's Robbery Of A Suspected Marijuana Dealer Is Sufficient To Show The Requisite Effect On "Commerce Over Which The United States Has Jurisdiction"

Because the Hobbs Act's reach is "coextensive with that of the Commerce Clause," *Walker*, 657 F.3d at 179 (citation omitted), the government may satisfy the Act's jurisdictional element in a variety of ways. For example, it may present case-specific proof of a robbery's effect on "commerce" or "the movement of any article or commodity in commerce," 18 U.S.C. 1951(a), by establishing that a robbery interfered with a commercial establishment's purchase of goods or services from out of state. A *de minimis* effect of that character brings the robbery within the scope of the Act. See pp. 17-18, 21 & n.3, *supra*.

But because the Act's jurisdictional element is also satisfied by showing an effect on any other "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(b)(3), the government can carry its bur-

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driver); *Gray*, 260 F.3d at 1275-1276; *Malone*, 222 F.3d at 1294-1295 (10th Cir.) (robberies of restaurant and a business); *United States* v. *Hebert*, 131 F.3d 514, 521-524 (5th Cir. 1997) (per curiam) (robberies of restaurant and liquor store), cert. denied, 523 U.S. 1101 (1998).

den by presenting proof that the charged robbery had the requisite effect on a particular *type* of economic activity over which, *as a matter of law*, the United States has regulatory "jurisdiction." In such instances, federal regulatory jurisdiction exists over the relevant class of economic activities, and individual robberies within that class are encompassed within the Hobbs Act.

1. Although the Hobbs Act asks whether a particular robbery had the requisite effect on commerce, the government may satisfy that showing by demonstrating that the robbery falls within a class subject to congressional regulation even when the particular conduct is local. For instance, in *Russell*, this Court considered whether the arson of a two-unit apartment building in Chicago, Illinois, violated 18 U.S.C. 844(i). See *Russell*, 471 U.S. at 858-859. That criminal prohibition applies to arson of property "used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce," 18 U.S.C. 844(i), and thus "expresses an intent by Congress to exercise its full power under the Commerce Clause." 471 U.S. at 859. Section 844(i) does not itself define particular classes of property that satisfy that standard. The Court nevertheless unanimously concluded in *Russell* that arson of rental property has the requisite connection to interstate commerce because "the local rental of an apartment unit is merely an element of a much broader commercial market in rental properties." *Id.* at 862. "The congressional power to regulate the class of activities that constitute the rental market for real

estate," the Court held, "includes the power to regulate individual activity within that class." *Ibid.*[4]

Similarly, the Sherman Act, 15 U.S.C. 1 *et seq.*, prohibits contracts or conspiracies "in restraint of trade or commerce among the several States, or with foreign nations," 15 U.S.C. 1, and has long been held to "exercise all the [constitutional] power [Congress] possessed," *Summit Health*, 500 U.S. at 329 n.10 (citation omitted). The Sherman Act does not delineate particular commercial activities over which Congress has jurisdiction even when the conduct in question takes place within a single State. Nevertheless, this Court has long recognized that the Sherman Act reaches even wholly local activity that will substantially affect interstate commerce. See *McLain*, 444 U.S. at 241 (citing *Wickard* v. *Filburn*, 317 U.S. 111 (1942), to explain that Congress's commerce power extends to "activities that, while wholly local in nature, nevertheless substantially affect interstate commerce" and stating that this Court has "often noted the correspondingly broad reach of the Sherman Act" (emphasis omitted)).

2. Petitioner's robberies of local marijuana dealers belong to a class of activities that bears the requisite substantial effect on interstate commerce. Congress exercised the power to regulate all marijuana traffick-

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[4] In *Jones* v. *United States*, 529 U.S. 848 (2000), the Court clarified that Section 844(i) requires a showing that the property at issue be actively used for commercial purposes. *Id.* at 855-856 (owner-occupied property is not covered because it is not actively used in an activity affecting commerce). But the Court did not question *Russell*'s holding that arson of rental property in a local market satisfies the statutory and constitutional test because it belongs to a broader commercial market. *Id.* at 856.

ing in the Controlled Substances Act, and *Raich* confirmed that Congress's authority over commerce includes the power to regulate the wholly intrastate production and distribution of marijuana. Accordingly, all domestic trade in marijuana by drug dealers, even trade occurring entirely within a single State, is "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(b)(3), as a matter of law. The United States may therefore prove an effect on "commerce over which the United States has jurisdiction" by proving that the defendant robbed (or attempted to rob) a marijuana dealer of marijuana.

a. Congress enacted the CSA to "control the legitimate and illegitimate traffic in controlled substances." *Raich*, 545 U.S. at 12. In so doing, Congress specifically found that controlled substances manufactured and distributed "intrastate cannot be differentiated from controlled substances manufactured and distributed interstate" and that the "[l]ocal distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances." 21 U.S.C. 801(4) and (5). Congress accordingly exercised regulatory authority over "the intrastate incidents of the traffic in controlled substances." See 21 U.S.C. 801(6). This Court's decision in *Raich* confirms that "Congress' regulatory jurisdiction" (545 U.S. at 27 n.37) over interstate commerce includes the power to regulate "the intrastate manufacture and possession of marijuana" for personal medical use under the line of Commerce Clause precedents governing "the power to regulate activities that substantially affect interstate commerce." *Id.* at 15, 17.

In light of that holding, all of the marijuana trade, even the portions of which that occur entirely within

one State, is "commerce over which the United States has jurisdiction" for purposes of the Hobbs Act, 18 U.S.C. 1951(b)(3). That is because it is now beyond question that local marijuana production is within Congress's regulatory authority, and this Court has repeatedly recognized that Section 1951(b)(3)'s definition of "commerce" is coextensive with the full reach of congressional power over commerce. *Scheidler*, 537 U.S. at 408; *Culbert*, 435 U.S. at 373; *Stirone*, 361 U.S. at 215.

b. Because the marijuana trade is "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(b)(3), it follows that the robbery of a marijuana dealer of marijuana necessarily will "in any way or degree" "affect[] [such] commerce" (namely, the marijuana trade) or "the movement of an[] article or commodity in [such] commerce," 18 U.S.C. 1951(a). Marijuana dealers engage in the quintessentially commercial activity of selling a product, and robberies of their marijuana as a matter of practical economics will have a non-*de minimis* effect on interstate commerce. Under "any commonsense appraisal," see *Raich*, 545 U.S. at 29, of the consequence of a theft of that commodity, a realistic probability exists that the victim-dealer would enter the interstate market to replenish his stolen goods; that the dealer's customers would go to an alternative source trading in out-of-state marijuana; that other interstate traffickers would enter the local market to replace the victim dealer; or that the stolen commodity itself would enter in the larger interstate market.[5] Similarly, robberies in which the

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[5] These effects need not be certain to fall within the Act. *United States* v. *Staszcuk*, 517 F.2d 53, 60 (7th Cir.) (en banc) (Stevens, J.) ("realistic probability" of an effect on commerce, not "actual ef-

inventory of marijuana dealers is stolen will directly affect the "movement of an[] article or commodity"—the stolen marijuana—in "commerce over which the United States has jurisdiction." It follows that the Hobbs Act's jurisdictional element can be satisfied by proving that the defendant robbed a marijuana dealer of his marijuana.[6]

The same holds true in the context of an attempted robbery of a marijuana dealer for marijuana. Because an attempted Hobbs Act robbery is an inchoate crime, "the defendant's conduct should be measured according to the circumstances as he believe[d] them to be, rather than the circumstances as they may have existed in fact." Model Penal Code § 5.01, cmt. 3, at 307 (1985) (quoted in *United States* v. *Williams*, 553 U.S. 285, 300 (2008)). Thus, to prove such an attempt, "the government need not prove that the defendant's ac-

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fect," is the test), cert. denied, 423 U.S. 837 (1975); accord, *e.g.* *United States* v. *Campbell*, 770 F.3d 556, 573 (7th Cir. 2014), cert. denied, 135 S. Ct. 1724 (2015); *United States* v. *Watkins*, 509 F.3d 277, 281 (6th Cir. 2007).

[6] As the court of appeals recognized, this does not imply that all robberies of any individuals who possess marijuana in a private, non-commercial context fall within the Hobbs Act. J.A. 86a. Lower courts have found that such individual robberies have a more speculative and attenuated connection to interstate commerce than robberies targeted at business assets and in particular contexts thus fall outside of the Hobbs Act. See, *e.g.*, *United States* v. *Wang*, 222 F.3d 234, 240 (6th Cir. 2000); *United States* v. *Collins*, 40 F.3d 95, 100 (5th Cir. 1994), cert. denied, 514 U.S. 1121 (1995). But those cases differ from ones like this one, involving the targeting of a business participating in a market over which Congress has jurisdiction. Cf. *United States* v. *Powell*, 693 F.3d 398, 403-404 (3d Cir. 2012) (distinguishing individual-robbery cases from robberies targeting of assets of a business engaged in interstate commerce), cert. denied, 133 S. Ct. 901 (2013).

tions actually obstructed, delayed, or affected commerce"; it need only show "a 'realistic probability' of that result" by showing that the defendant "targeted" the drug dealer for robbery. *United States* v. *Muratovic*, 719 F.3d 809, 813-814 (7th Cir. 2013) (citation omitted). The "[p]otential impact" of the attempted offense is then "measured at the time of the attempt * * * based on the assumed success of the intended scheme." *United States* v. *Le*, 256 F.3d 1229, 1232-1233 (11th Cir. 2001) (citation omitted), cert. denied, 534 U.S. 1145 (2002).

In this case, the evidence was more than sufficient to show that petitioner attempted to rob marijuana dealers and steal their marijuana and drug proceeds. See pp. 5-6, *supra*. As the court of appeals explained, petitioner cannot "fortuitously escape prosecution under the Hobbs Act" simply "because his target did not possess" the marijuana that petitioner intended to steal. J.A. 84a-85a.

3. a. Petitioner argues (Br. 19-21) that the jury must find "every element of the offense charged" beyond a reasonable doubt and that the court of appeals "impermissibly relieve[d] the Government of its burden" of proving the Hobbs Act's jurisdictional element to the jury by ruling that, as a matter of law, proof of petitioner's attempted "robbery of suspected marijuana dealers" was sufficient because "all drug dealing affects commerce for purposes of the Hobbs Act." That is incorrect.

The government does not dispute that "[t]he Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged." *United States* v. *Gaudin*, 515 U.S. 506, 511 (1995). Nor does the gov-

ernment dispute that the "jury's constitutional responsibility is not merely to determine the facts" but also "to apply the law to those facts and draw the ultimate conclusion of guilt or innocence." *Id.* at 514. A jury, however, does not have "the power to determine * * * pure questions of law in a criminal case." *Id.* at 513 (emphasis omitted). Instead, "the judge must be permitted to instruct the jury on the law and to insist that the jury follow his instructions." *Ibid.* (citing *Sparf* v. *United States*, 156 U.S. 51, 105-106 (1895)). The jury then determines "whether the evidence established the [defendant's] guilt or innocence" by "applying to the facts the principles of law announced by the court." *Sparf*, 156 U.S. at 106.

In this case, proof of the Hobbs Act's jurisdictional element is established by two propositions: (1) petitioner attempted to rob a drug dealer of his supply of marijuana and (2) the marijuana trade, even those portions of it that occur wholly within one State, constitutes "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(b)(3). The first proposition is a question of fact the government sufficiently established at trial. The second is a pure question of law concerning the scope of the United States' "jurisdiction" and, as explained above, the answer to that legal question follows from the Court's analysis in *Raich*.

A judge may thus properly instruct the jury that, as a matter of law, the marijuana trade is "commerce over which the United States has jurisdiction," 18 U.S.C. 1951(b)(3), and "insist that the jury follow [that] instruction[]," *Gaudin*, 515 U.S. at 513, when determining whether the government established the Hobbs Act's jurisdictional element. As Judge

Cabranes has explained, instructions that the jury must make an independent finding of an "effect" on commerce; that the effect can be "very slight" and "'potential' rather than actual"; that commerce includes "all . . . commerce over which the United States has jurisdiction"; and that "[t]he United States' jurisdiction over commerce encompasses marijuana that is grown, processed, and sold entirely within a single state," all represent "no more than a summary of well established law." *United States* v. *Needham*, 604 F.3d 673, 688-689 (2d Cir.) (Cabranes, J., dissenting in part and concurring in part), cert. denied, 562 U.S. 955 (2010) (citations omitted). Such instructions preserve the jury's proper role in finding historical facts, applying the law as instructed by the judge to those facts, and finding whether each element of the offense has been proven beyond a reasonable doubt. Indeed, it would be anomalous to allow each jury in each case to make its own decision about whether the marijuana trade is "commerce over which the United States has jurisdiction." That question does not depend on the facts of any particular prosecution, should have the same answer in every case, and reflects a pure question of law.[7]

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[7] Petitioner did not challenge the district court's jury instructions below, see J.A. 82a; Pet. C.A. Br. 2, 9, 13-18, and failed to present any jury-instruction question for this Court's review, see Pet. i. Any claim of instructional error would therefore be forfeited and lie outside the question presented. Regardless, although the district court's instructions could have been more explicit, along the lines explained by Judge Cabranes in *Needham* (see 604 F.3d at 688-699 (dissenting opinion)), they were consistent with the legal principles described above. The district court instructed the jury that it could convict petitioner for Hobbs Act robbery only if it found the Act's jurisdictional element satisfied and accurately

b. Petitioner's remaining arguments are without merit. Petitioner argues, for instance, that "the pertinent inquiry" is whether the government established the Hobbs Act's affect-on-commerce element "*in this prosecution*" with "proof beyond a reasonable doubt" and the "[c]ongressional findings [in the CSA] cannot substitute for [such] proof" needed to establish the Act's jurisdictional element. Br. 23 (citation omitted). But congressional findings were not a "substitute" for any requisite proof in this case. Congress's findings in the CSA are relevant in deciding the purely *legal* question of whether the United States has regulatory jurisdiction over the intrastate marijuana trade. See *Raich*, 545 U.S. at 20-21; see also *Needham*, 604 F.3d at 688 (Cabranes, J., dissenting in part and concurring in part) (recognizing that, although the CSA differs from the Hobbs Act, "[t]hat does not mean * * * that *Raich* has no bearing on the definition of 'commerce' in the Hobbs Act"). But the resolution of that legal issue, as explained above, does not displace the jury's role in weighing the evidence and determining whether the Act's jurisdictional element has been proven beyond a reasonable doubt in this prosecution.

Petitioner appears to contend (Br. 3, 15-17) that the text of the Hobbs Act requires proof that "the specific personal property made the subject of the robbery affects commerce" because the Act's defini-

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defined that offense element. See p. 8, *supra*. The instructions also effectively instructed the jury that the marijuana trade is "commerce" under the Hobbs Act by stating that the government could carry its burden of proving an effect on commerce by proving that petitioner "reduced the movement of articles and commodities in interstate commerce, in this case, illegal drugs and drug proceeds." J.A. 63a.

tion of robbery in Section 1951(b)(1) requires proof of the taking or obtaining of "personal property." In petitioner's view (Br. 15) no such effect can be shown if the "personal property originat[ed] intrastate and never traveled interstate." The aggregation of the effect of such robberies as a "class," petitioner continues (Br. 16), cannot properly be "substitute[d]" for the Act's "specific personal property element" because doing so "creates an irrebuttable presumption of guilt." Those contentions misunderstand the Hobbs Act's requirements.

The Hobbs Act requires proof that the defendant affected "commerce" or the movement of an item "in commerce" "*by robbery*." 18 U.S.C. 1951(a) (emphasis added). Although robbery is defined in part by reference to the taking or obtaining of "personal property," 18 U.S.C. 1951(b)(1), it is the robbery, not the specific personal property taken, that must affect commerce. And as explained above, it is established law that purely intrastate activity can affect commerce when it belongs to a class of economic activity that, in the aggregate, has a substantial effect on commerce and that this form of analysis can be employed in a statute, such as the Hobbs Act, that invokes Congress's full commerce authority. See pp. 17-21, 22-24, *supra*. The robbery of a marijuana dealer of marijuana, even when the marijuana is produced and sold in one State, has such an effect.

C. The Evidence Is Sufficient To Establish That Petitioner Targeted Marijuana Dealers Whose Product Originated Out Of State

The court of appeals upheld petitioner's Hobbs Act convictions on the legal basis that Congress has regulatory jurisdiction over all marijuana distribution,

local as well as explicitly interstate. As discussed above, that holding is correct. But even without reliance on that theory, the evidence in this case was sufficient to support petitioner's Hobbs Act convictions because a reasonable jury could have inferred that the victim drug dealers had engaged in commerce crossing state lines.

When the government seeks to establish a case-specific effect on interstate commerce in a Hobbs Act case, it may do so in a variety of ways. For instance, as every court of appeals with criminal jurisdiction has held, proof that a robbery depleted the assets of a commercial enterprise that trades in out-of-state goods is sufficient to show an interference with interstate commerce because the depletion of assets will have at the very least a slight effect on that commerce by diminishing the enterprise's ability to engage in it. See, *e.g.*, *United States* v. *Ossai*, 485 F.3d 25, 30-31 (1st Cir.) (robbery of doughnut shop), cert. denied, 552 U.S. 919 (2007); *United States* v. *Elias*, 285 F.3d 183, 187-189 (2d Cir.) (robbery of grocery store), cert. denied, 537 U.S. 988 (2002); *United States* v. *Urban*, 404 F.3d 754, 764-765 (3d Cir.) (discussing depletion-of-asset precedents, including precedent concerning robbery of tavern), cert. denied, 546 U.S. 1030 (2005); *United States* v. *Tillery*, 702 F.3d 170, 174 (4th Cir. 2012) (robbery of dry cleaner), cert. denied, 133 S. Ct. 2369 (2013); *United States* v. *Robinson*, 119 F.3d 1205, 1212-1215 (5th Cir. 1997) (robberies of check-cashing stores), cert. denied, 522 U.S. 1139 (1998); *United States* v. *Smith*, 182 F.3d 452, 453, 456-457 (6th Cir. 1999) (robberies of grocery and party stores), cert. denied, 530 U.S. 1206 (2000); *Muratovic*, 719 F.3d at 813-814 (7th Cir.) (attempted robbery of trucking

business); *United States* v. *Dobbs*, 449 F.3d 904, 911-912 (8th Cir. 2006) (robbery of "'mom and pop' convenience store"), cert. denied, 549 U.S. 1139, and 549 U.S. 1233 (2007); *United States* v. *Nelson*, 137 F.3d 1094, 1102 (9th Cir.) (robberies of jewelry stores), cert. denied, 525 U.S. 901 (1998); *United States* v. *Curtis*, 344 F.3d 1057, 1069-1071 (10th Cir. 2003) (robberies of convenience stores and restaurants), cert. denied, 540 U.S. 1157 (2004); *United States* v. *Guerra*, 164 F.3d 1358, 1360-1361 (11th Cir. 1999) (robbery of gas station); *United States* v. *Harrington*, 108 F.3d 1460, 1468-1469 (D.C. Cir. 1997) (robbery of restaurant).

A robbery that impairs a business's ability to purchase equipment from out-of-state sources is sufficient for the same reason. See, *e.g.*, *United States* v. *Wilkerson*, 361 F.3d 717, 729-731 (2d Cir.), cert. denied, 543 U.S. 908 (2004); *United States* v. *Hebert*, 131 F.3d 514, 523-524 (5th Cir. 1997) (per curiam), cert. denied, 523 U.S. 1101 (1998); *United States* v. *Elders*, 569 F.2d 1020, 1025 (7th Cir. 1978). Likewise, proof that a commercial victim sells goods to out-of-state customers can establish the requisite effect on that commerce. See, *e.g.*, *United States* v. *Rodriguez*, 218 F.3d 1243, 1245 (11th Cir. 2000) (per curiam), cert. denied, 531 U.S. 1099 (2001); *United States* v. *Farrish*, 122 F.3d 146, 149 (2d Cir. 1997), cert. denied, 522 U.S. 1118 (1998).

Here, the trial record is sufficient to show an effect on commerce because the evidence supports the inference that petitioner attempted to steal marijuana and proceeds from the sale of marijuana that had *itself* traveled in interstate commerce. Although the court of appeals did not rest its decision on that ground, it

provides a sufficient basis on which to affirm the judgment below.

The court of appeals determined, and petitioner does not contest, that the trial evidence was sufficient to show that both Whorley and Lynch were marijuana dealers. J.A. 82a-83a. Whorley "admitted to having sold drugs in the past" and one of the investigating detectives "suspected Whorley of being a drug dealer" because Whorley's home had been robbed twice before and "drug dealers are commonly victims of repeated home invasions." J.A. 83a. Similarly, Lynch admitted that he "had sold drugs before the robbery without his wife's knowledge." J.A. 84a. And when Fitzgerald demanded that Lynch hand over his marijuana, Lynch did not deny his role in marijuana trafficking, asserting instead that "the marijuana was with another person." *Ibid.*

Several basic facts about the Roanoke drug trade in general and the targeted marijuana in particular support a rational inference that Whorley and Lynch sold marijuana that traveled in interstate commerce. The government's expert in drug trafficking explained that, in 2009, marijuana and cocaine were commonly sold in Roanoke. Tr. 63-64. Cocaine typically would "come[] into the City of Roanoke in bulk," specifically in kilogram-size "brick[s]" having a wholesale cost of $22,000 to $30,000. Tr. 64. A wholesaler purchasing such a brick would then "break it down" into smaller quantities for resale to other dealers. Tr. 64-65. Those downstream dealers would, in turn, break those smaller packages into gram-size user amounts, which were then sold for about $100. Tr. 66-67. Roanoke marijuana dealers used the same "bulk, wholesale, to a user amount" distribution process as cocaine dealers

in order to generate substantial cash profits. Tr. 68-69. In addition, such marijuana dealers could generate significant profits by selling "really good grade" marijuana, which was known in Roanoke as "exotic." Tr. 69. The government's evidence about Whorley and Lynch's marijuana distribution enterprises permitted the jury to fit each of these dealers into one of the two business models described by the expert: Whorley trafficked in high-end "exotic" marijuana, whereas Lynch was an upstream wholesaler who trafficked in large volumes of marijuana.

A reasonable jury could have inferred that Whorley's "exotic" marijuana was not an in-state product. "Exotic" is commonly understood to mean "from another country" and "not native to the place where found." *Webster's Third New International Dictionary* 798 (2002). That understanding is reinforced by evidence that such "exotic" marijuana is a high-grade product that has been bred to have a "really high THC" content, *i.e.*, a high concentration of "the active ingredient in marijuana." Tr. 69. The jury could rationally have concluded that such high-THC marijuana would likely have been produced by specialized growers located in a State or foreign country with a favorable climate.

Similarly, the Southwest Goonz targeted Lynch because he had previously been robbed of a bulk quantity—20 pounds—of marijuana. J.A. 74a. Cf. *Raich*, 545 U.S. at 31 n.41 (observing that "3 pounds of marijuana yields roughly 3,000 joints or cigarettes"). Petitioner himself admitted that he expected to find "pounds of weed" in the robbery. Tr. 420; see Tr. 354. The government presented expert testimony that the Roanoke marijuana trade was structured similarly to

the cocaine trade, with bulk amounts "com[ing] into" the Roanoke area. Tr. 64, 69; see p. 4, *supra*. The jury could have rationally inferred that the "pounds of weed" petitioner expected to find in Lynch's home would have been part of a bulk shipment containing marijuana brought into Virginia from another State or country.

Such evidence was sufficient to allow the jury to conclude that petitioner targeted marijuana dealers dealing in out-of-state marijuana. The robbery or attempted robbery of such dealers directly engaged in interstate commerce is an activity that will have at least a *de minimis* effect on interstate commerce or the movement of a commodity in such commerce thus satisfying the Hobbs Act's jurisdictional element.[8]

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[8] Petitioner briefly argues (Br. 16, 27) that the district court's *in limine* ruling erroneously prohibited him from presenting evidence to support a defense based on the contention that the marijuana dealers targeted for robbery may have dealt in intrastate marijuana grown locally in Virginia. That question should not be addressed by this Court because it lies outside the question presented. Petitioner mentioned the district court's *in limine* ruling as procedural history in his certiorari petition but rested the question presented and his argument for review exclusively on the alleged insufficiency of the evidence actually admitted. See Pet. i, 3-4, 7-14. Even if petitioner had challenged the *in limine* ruling in his petition (which he did not), "discuss[ing] th[at] issue in the text of his petition for certiorari [would] not [have] br[ought] it before [the Court]" because "Rule 14.1(a) requires that a subsidiary question be fairly included in the question presented." *Wood* v. *Allen*, 558 U.S. 290, 304 (2010) (citation, emphasis, and brackets omitted). Although the analysis underlying the sufficiency and *in limine* questions may share some common elements, a "question which is merely 'complementary' or 'related' to the question presented * * * is not 'fairly included therein.'" *Izumi Seimitsu*

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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Kogyo Kabushiki Kaisha v. *U.S. Philips Corp.*, 510 U.S. 27, 31 (1993) (per curiam) (citation omitted).

APPENDIX

18 U.S.C. 1951 provides:

Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside

thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.